

LETTER OPINION
2004-L-65

October 29, 2004

Mr. Richard J. Riha
Burleigh County State's Attorney
514 East Thayer Avenue
Bismarck, ND 58501-4413

Dear Mr. Riha:

Thank you for your letter asking whether the offices of county auditor and county recorder may be combined as "functionally related" offices under N.D.C.C. ch. 11-10.2. For the reasons discussed below, it is my opinion that the offices of county auditor and county recorder are functionally related and may be combined under N.D.C.C. ch. 11-10.2.

ANALYSIS

Section 11-10.2-01(1), N.D.C.C., states, in part:

1. A county may, without requiring local citizens to permit county home rule powers:¹
 - a. Combine any elective county office with one or more functionally related elective or appointive county offices;

. . . .

N.D.C.C. § 11-10.2-01(1). If the offices of county auditor and county recorder are functionally related, then those offices may be combined under N.D.C.C. ch. 11-10.2.

"Functionally related" is not defined in state law, nor are there Attorney General opinions addressing its meaning. Also, the legislative history of the passage of this chapter

¹ Burleigh County does not have home rule powers authorized under N.D.C.C. ch. 11-09.1.

provides no insight as to the meaning of “functionally related.”² Words in a statute are to be understood in their ordinary sense, unless a contrary intention plainly appears. N.D.C.C. § 1-02-02. “Function” means “[a]ssigned duty or activity.” The American Heritage Dictionary 539 (2d ed. 1991). “Related” means “[c]onnected; associated.” The American Heritage Dictionary 1043 (2d ed. 1991). Thus, it is my opinion that the offices of county auditor and county recorder are functionally related if the duties of those offices have some connection or association with each other. The following paragraphs review the duties of the county auditor and county recorder.

The county auditor is the chief financial officer of the county and keeps complete and detailed records of all financial transactions of the county. N.D.C.C. § 11-13-04. The county auditor must receive for filing various documents and bonds, N.D.C.C. § 11-13-02(3), and must preserve documents, books, records, and maps that are to be kept in the auditor’s office, N.D.C.C. § 11-13-02(4). The auditor must record in the office of the recorder certain bonds not issued by the state bonding fund. N.D.C.C. § 11-13-02(5). The auditor must also file and preserve all accounts, vouchers, and other papers pertaining to the settlement of any accounts to which the county is a party. N.D.C.C. § 11-13-02(8). When a deed, contract for deed, patent, plat, replat, or auditor’s lot is presented to the county auditor for transfer or filing, the county auditor must determine whether there are delinquent taxes or special assessments. N.D.C.C. § 11-13-12. Whenever certain sheriff’s deeds or other conveyances of real property are offered for recording, the county auditor enters the transfer and the county recorder records the transfer. N.D.C.C. § 11-13-14. The county auditor also provides information regarding unpaid taxes to mortgagees of lands in the county. N.D.C.C. § 11-13-15.

The county recorder has the duty to record instruments affecting the title to or creating a lien upon real estate within the county. N.D.C.C. § 11-18-11. The county recorder is required to keep a record of each patent, deed, mortgage, bill of sale, security agreement, judgment, decree, lien, certificate of sale, and other instrument required to be filed. N.D.C.C. § 11-18-01(1). Except as otherwise provided by law, the recorder may not record any instrument that changes the current property description unless there is entered thereon a certificate of the county auditor showing information related to delinquent taxes, etc. N.D.C.C. § 11-18-02. The county recorder must notify the county auditor of the filing of deeds, patents, plats, and vacations of plats, streets, or roads. N.D.C.C. § 11-18-02.1. The county auditor then corrects the tax rolls and any other records in the auditor’s office so the records are current for the preparation of real property assessment books. Id. The county recorder must file with the county auditor a statement under oath showing the fees the recorder has received since the recorder’s last report. N.D.C.C. § 11-18-06.

² Chapter 11-10.2, N.D.C.C., entitled County Officer Combination, Separation, and Redesignation, was passed as part of the tool chest bill. See 1993 N.D. Sess. Laws ch. 401, § 3.

As the statutes discussed in the above two paragraphs indicate, the county auditor and county recorder have duties which are interrelated. Other statutes also indicate this relationship. In the county consolidated office form of government, the county auditor also performs the duties of the county recorder. N.D.C.C. §§ 11-08-06(1), 11-08-11. The county auditor must give each assessor a list of the description of any lands where the title to the coal or minerals is not in the person holding the title to the overlying land. N.D.C.C. § 57-02-25. The county recorder must provide to the county auditor information in the recorder's office that will enable the auditor to prepare such lists. *Id.* Before providing a notice of foreclosure of a tax lien, the county auditor must request and receive from the county recorder a list of names and addresses of owners, mortgagees, and lienholders of the real property. N.D.C.C. § 57-28-04(2).

As the discussion in the above paragraphs indicates, many of the duties of the county auditor and county recorder are connected or associated with each other. Thus, it is my opinion that the offices of county auditor and county recorder are functionally related and, therefore, may be combined under N.D.C.C. ch. 11-10.2.

Sincerely,

Wayne Stenehjem
Attorney General

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This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts. See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).